

Senate File 467 - Introduced

SENATE FILE 467

BY BOLKCOM

A BILL FOR

1 An Act relating to criminal asset forfeiture and providing
2 penalties and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **809B.1 Title.**

2 This chapter shall be known and may be cited as the "*Criminal*
3 *Asset Forfeiture Act*".

4 Sec. 2. NEW SECTION. **809B.2 Criminal asset forfeiture.**

5 1. All forfeitures of property shall be conducted in
6 accordance with the procedures of this chapter as supplemented
7 by the rules of criminal procedure.

8 2. Forfeitures are not favored under state law and any
9 ambiguity in this chapter shall be strictly construed against
10 the state.

11 3. Forfeitures under this chapter are criminal in form.

12 Sec. 3. NEW SECTION. **809B.3 Property forfeitures generally.**

13 1. After a person is convicted of a public offense for which
14 forfeiture is expressly authorized as a penalty, the following
15 shall be subject to forfeiture to the state and a property
16 right shall not exist in them:

17 a. All of the convicted person's property constituting,
18 or derived from, any proceeds obtained directly from the
19 commission of the offense.

20 b. All of the convicted person's property that was used,
21 or intended to be used, to commit or facilitate the commission
22 of the offense and which bears a significant relation to the
23 offense.

24 2. Additional penalties, such as personal money judgments,
25 are not authorized under this chapter except as provided
26 by section 809B.26. Any restitution made to victims using
27 property forfeited under this chapter shall serve to satisfy in
28 part or in whole any restitution order against the convicted
29 person.

30 Sec. 4. NEW SECTION. **809B.4 Contraband.**

31 A property right does not exist in contraband, the
32 possession of which is inherently unlawful. This chapter does
33 not govern the forfeiture of such contraband.

34 Sec. 5. NEW SECTION. **809B.5 Process and seizure.**

35 1. Except as provided for in subsection 2, property

1 subject to forfeiture under this chapter may be seized by law
2 enforcement authority only upon process issued by the district
3 court under section 809B.17, 809B.18, 809B.19, or 809B.31.

4 2. Seizure without process may be made for any of the
5 following reasons:

6 a. The seizure is incident to an arrest or a search under a
7 search warrant or inspection under an administrative inspection
8 warrant.

9 b. The property subject to seizure has been the subject of
10 a prior judgment in favor of the state in a criminal injunction
11 or forfeiture proceeding under this chapter.

12 c. Probable cause exists to believe that the property is
13 dangerous to health or safety.

14 d. Probable cause exists to believe that the property is
15 subject to forfeiture and prior notice or delay is likely to
16 result in the destruction or removal of the property or in the
17 property otherwise being made unavailable for forfeiture.

18 3. If property is seized without process, proceedings for
19 the authority of the seizure shall be instituted in district
20 court as soon as is practicable.

21 Sec. 6. NEW SECTION. 809B.6 Pretrial motion for return of
22 seized property.

23 When property has been seized under this chapter, the
24 defendant or another putative interest holder in the property
25 may request the court to determine the validity of the seizure
26 by filing a motion seeking an order to show cause. The
27 motion shall be filed no later than thirty days before the
28 commencement of the criminal trial. When a motion is filed
29 under this section, the court shall issue an order to show
30 cause to the seizing law enforcement authority for a hearing
31 on the sole issue of whether probable cause for forfeiture of
32 the property exists, which shall be the state's burden. Upon
33 a finding that probable cause does not exist, the court shall
34 promptly order the release of the property.

35 Sec. 7. NEW SECTION. 809B.7 Claims for damage, loss, or

1 impermissible sale of property.

2 After a finding under this chapter that seized property is
3 not subject to forfeiture, the property owner may bring a claim
4 against the law enforcement authority that had custody of the
5 property and lost, damaged, or impermissibly sold the property.

6 Sec. 8. NEW SECTION. 809B.8 Use of property held in
7 custody.

8 1. Whenever property is forfeited under this chapter and
9 after all ancillary proceedings under section 809B.30 are
10 concluded, the property shall be transferred to the custody of
11 the county attorney, if the law enforcement authority seizing
12 the property has county or local jurisdiction, or the attorney
13 general, if the law enforcement authority seizing the property
14 has statewide jurisdiction.

15 2. The county attorney or the attorney general shall sell
16 any forfeited property which is not required to be destroyed by
17 law and which is not harmful to the public. Sale of forfeited
18 property to any employee of the county attorney or attorney
19 general, to a person related by consanguinity or affinity,
20 within the third degree, to an employee of the county attorney
21 or attorney general, or to another law enforcement authority
22 is prohibited.

23 3. The proceeds from sale shall be used to pay all
24 reasonable expenses related to the maintenance of custody and
25 sale of such property. The balance of the proceeds shall be
26 distributed in accordance with section 809B.9.

27 Sec. 9. NEW SECTION. 809B.9 Use of cash or proceeds of
28 property.

29 Cash or proceeds of forfeited property transferred pursuant
30 to section 809B.8 shall be distributed in the following order:

31 1. To satisfy any restitution orders for victims of the
32 underlying offense.

33 2. To pay any liabilities owed by the state to defendants or
34 claimants who substantially prevail under section 809B.15.

35 3. If in the custody of the attorney general, to the general

1 fund of the state, or if in the custody of the county attorney,
2 to the general fund of the county.

3 Sec. 10. NEW SECTION. **809B.10 Distribution of property**
4 **among law enforcement authorities.**

5 If county or local and state law enforcement authorities
6 were substantially involved in effecting the lawful seizure,
7 the court having jurisdiction over the forfeiture proceedings
8 shall equitably distribute the property between the county
9 attorney and the attorney general.

10 Sec. 11. NEW SECTION. **809B.11 Annual audit of forfeited**
11 **property.**

12 It shall be the responsibility of every county in this state
13 to provide, through the board of supervisors, county auditor,
14 or other appropriate auditor and the county attorney, an annual
15 audit of all forfeited property and proceeds obtained under
16 this chapter and the disposition of such property and proceeds,
17 and of all fees awarded pursuant to section 809B.15. The audit
18 shall be submitted to the attorney general by September 30 of
19 each year.

20 Sec. 12. NEW SECTION. **809B.12 Annual report.**

21 The attorney general shall annually submit a report to the
22 general assembly describing the forfeited property or proceeds
23 of the forfeited property obtained under this chapter, and of
24 the fees awarded pursuant to section 809B.15. The report shall
25 give an accounting of all proceeds derived from the sale of
26 forfeited property.

27 Sec. 13. NEW SECTION. **809B.13 Public access.**

28 All accounting and audit records generated under sections
29 809B.10 and 809B.11 shall be publicly available.

30 Sec. 14. NEW SECTION. **809B.14 Taxpayer standing.**

31 Any taxpayer to the state has standing to challenge in
32 court any actions contrary to section 809B.8, 809B.9, 809B.10,
33 809B.11, 809B.12, or 809B.13.

34 Sec. 15. NEW SECTION. **809B.15 Fee shifting.**

35 In a forfeiture proceeding under this chapter in which the

1 defendant or claimant substantially prevails, the state shall
2 be liable for all of the following:

3 1. Reasonable attorney fees and other litigation costs
4 reasonably incurred by the defendant or claimant.

5 2. Postjudgment interest.

6 3. In cases involving currency or other negotiable
7 instruments, all of the following:

8 a. Interest actually paid to the state from the date of
9 seizure of the property that resulted from the investment of
10 the property in an interest-bearing account or instrument.

11 b. An imputed amount of interest that such currency,
12 instruments, or proceeds would have earned at the rate
13 applicable to the thirty-day treasury bill, for any period
14 during which no interest was paid commencing fifteen days after
15 the property was seized by a law enforcement authority, or was
16 turned over to a law enforcement authority by a federal law
17 enforcement authority. Such period during which no interest
18 was paid shall not include any period when the property
19 reasonably was in use as evidence in an official proceeding or
20 in conducting scientific tests for the purpose of collecting
21 evidence.

22 Sec. 16. NEW SECTION. 809B.16 General procedure for
23 forfeiture.

24 The proceedings for forfeiture of property shall be tried
25 in the same proceeding as the criminal case concerning the
26 determination of the defendant's guilt or innocence for the
27 underlying offense unless the defendant moves to bifurcate
28 the trial of the forfeiture from the trial of the underlying
29 criminal case. An information or an indictment charging the
30 defendant with an offense shall include notice to the defendant
31 that the state will seek forfeiture as part of any sentence.
32 Such notice shall include all of the following:

33 1. An itemized list of the specific property subject to
34 forfeiture, including but not limited to the address of any
35 real property, the exact dollar amount of any money, negotiable

1 instrument, or securities, and the make, model, year, and
2 license plate number of any vehicles.

3 2. A statement of the time and place of the offense.

4 3. A description of the particular use of the property in
5 the commission of the offense or a description of the property
6 constituting, or derived from, any proceeds obtained directly
7 from the commission of the offense.

8 Sec. 17. NEW SECTION. 809B.17 **Preservation of property**
9 **subject to forfeiture before filing information or indictment and**
10 **without process.**

11 1. Upon application of the state by a county attorney or
12 the attorney general, the district court may enter a temporary
13 restraining order or injunction, require the execution of a
14 satisfactory performance bond, or take any other action to
15 preserve the availability of property described in section
16 809B.3 for forfeiture prior to the filing of an indictment or
17 information and without notice to persons appearing to have an
18 interest in the property and an opportunity for a hearing if
19 the state demonstrates that probable cause exists to believe
20 each of the following:

21 a. The property with respect to which an order is sought
22 would be subject to forfeiture under this chapter.

23 b. The failure to enter an order or take other action
24 will result in the property being destroyed, removed from the
25 jurisdiction of the court, or otherwise made unavailable for
26 forfeiture.

27 2. An order entered or other action taken pursuant to this
28 section shall expire not more than ten days after the date on
29 which it is entered or taken, unless extended by the court for
30 good cause or unless an indictment or information described in
31 section 809B.16 has been filed. Upon the request of a putative
32 interest holder in property subject to an order entered or
33 other action taken under this subsection, a hearing shall be
34 held at the earliest possible time and prior to the expiration
35 of the temporary order or other action taken.

1 Sec. 18. NEW SECTION. **809B.18 Preservation of property**
2 **subject to forfeiture before filing information or indictment but**
3 **with process.**

4 1. Upon application of the state by a county attorney or the
5 attorney general, the court may enter a restraining order or
6 injunction, require the execution of a satisfactory performance
7 bond, or take any other action to preserve the availability of
8 property described in section 809B.3 for forfeiture under this
9 chapter prior to the filing of an indictment or information
10 if after notice to persons appearing to have an interest in
11 the property and an opportunity for a hearing, the state
12 demonstrates that a substantial probability exists of each of
13 the following:

14 a. The state will prevail on the issue of forfeiture.

15 b. The failure to enter an order or take other action
16 will result in the property being destroyed, removed from the
17 jurisdiction of the court, or otherwise made unavailable for
18 forfeiture.

19 c. The need to preserve the availability of the property
20 through the entry of the requested order or other action taken
21 outweighs the hardship on any party against whom the order is
22 to be entered or other action is to be taken.

23 2. An order entered or other action taken pursuant to this
24 section shall expire not more than thirty days after the date
25 on which it is entered or taken, unless extended by the court
26 for good cause or unless an indictment or information described
27 in subsection 1 has been filed.

28 Sec. 19. NEW SECTION. **809B.19 Preservation of property**
29 **subject to forfeiture upon filing information or indictment.**

30 Upon application of the state by a county attorney or the
31 attorney general, the court may enter a restraining order or
32 injunction, require the execution of a satisfactory performance
33 bond, or take any other action to preserve the availability
34 of property described in section 809B.3 for forfeiture under
35 this chapter upon the filing of an information or an indictment

1 charging an offense and alleging that the property is subject
2 to forfeiture.

3 Sec. 20. NEW SECTION. 809B.20 Hardship release of property
4 subject to forfeiture.

5 Upon application by a putative interest holder in the
6 property, including the defendant, the court may order the
7 release of seized property from the seizing law enforcement
8 authority pending the final determination of forfeiture if the
9 putative interest holder establishes by a preponderance of the
10 evidence each of the following:

11 1. The putative interest holder, including the defendant,
12 has a possessory interest in the property.

13 2. Continued possession of the property by the law
14 enforcement authority pending the final disposition of the
15 forfeiture proceedings will cause substantial hardship to the
16 putative interest holder, including any of the following:

17 a. Preventing the functioning of a legitimate business.

18 b. Preventing any individual from working.

19 c. Preventing any minor child or student from attending
20 school.

21 d. Preventing or hindering any person from receiving
22 necessary medical care.

23 e. Hindering the care of an elderly person or disabled
24 dependent child or adult.

25 f. Leaving any individual homeless.

26 g. Any other condition that the court determines causes a
27 substantial hardship.

28 3. The hardship from the continued possession of the
29 property by the law enforcement authority outweighs the
30 risk that the property will be destroyed, removed from the
31 jurisdiction of the court, or otherwise made unavailable for
32 forfeiture if the property is returned to the owner during the
33 pendency of the proceeding.

34 Sec. 21. NEW SECTION. 809B.21 Hearing regarding property —
35 rules of evidence.

1 The court may receive and consider, at a hearing held
2 pursuant to section 809B.17, 809B.18, 809B.19, or 809B.20,
3 evidence and information that would be inadmissible under the
4 rules of evidence.

5 Sec. 22. NEW SECTION. **809B.22 Forfeiture phase of criminal**
6 **proceeding.**

7 After a person is convicted on any count in an indictment
8 or information for which forfeiture is sought, the state shall
9 establish at a forfeiture hearing by clear and convincing
10 evidence that the property is forfeitable under section 809B.3
11 before the court enters a preliminary order of forfeiture.

12 Sec. 23. NEW SECTION. **809B.23 Extent of forfeitable**
13 **interest.**

14 If the court decides it is in the interests of judicial
15 economy, the court or jury may determine the extent of the
16 convicted person's forfeitable interest in the property
17 before a preliminary order of forfeiture is entered. Such
18 determination shall be subject to amendment pursuant to section
19 809B.30.

20 Sec. 24. NEW SECTION. **809B.24 Right to trial by jury.**

21 At the forfeiture hearing, the defendant shall have the
22 right to trial by jury of the forfeiture. The defendant may
23 waive this right while preserving the right to trial by jury of
24 the offense charged or other sentencing issues. Alternatively,
25 the defendant may preserve this right while waiving the right
26 to trial by jury of the offense charged or other sentencing
27 issues.

28 Sec. 25. NEW SECTION. **809B.25 Excessive fines.**

29 1. In entering a preliminary order of forfeiture, the court
30 shall make a determination that the forfeiture is not grossly
31 disproportional to the gravity of the underlying offense. The
32 state shall have the burden of establishing proportionality by
33 clear and convincing evidence.

34 2. In determining the value of property forfeited, the court
35 shall consider, among other factors, all of the following:

1 *a.* The market value of the property.

2 *b.* The subjective value of the property to the defendant and
3 the defendant's family members.

4 3. In determining the proportionality of forfeiture,
5 the court shall consider, among other factors, all of the
6 following:

7 *a.* The value of the property subject to forfeiture as
8 compared to the maximum fine available for the offense upon
9 which the forfeiture is based.

10 *b.* The value of the property subject to forfeiture as
11 compared to the range of fines available for the offense upon
12 which the forfeiture is based.

13 *c.* Whether the offense was isolated or part of a pattern of
14 criminal conduct.

15 *d.* The harm resulting from the offense upon which forfeiture
16 is based.

17 Sec. 26. NEW SECTION. **809B.26 Forfeiture of substitute**
18 **property.**

19 1. After entering a preliminary order of forfeiture,
20 the court may order the forfeiture of substitute property
21 up to the value of the property subject to the order if the
22 state establishes by clear and convincing evidence all of the
23 following:

24 *a.* The convicted person intentionally transferred, sold, or
25 deposited the property to avoid the court's jurisdiction.

26 *b.* The substitute property is owned in full by the convicted
27 person.

28 2. A codefendant shall not be subject to joint and several
29 liability for forfeiture judgments owed by other defendants
30 under this section.

31 Sec. 27. NEW SECTION. **809B.27 Notice to third parties.**

32 1. After the court enters a preliminary order of forfeiture,
33 the state shall send notice to any person who reasonably
34 appears to be a potential claimant with standing to contest the
35 forfeiture in an ancillary proceeding under section 809B.30.

1 Such potential claimants include but are not limited to:

2 *a.* Partial or joint owners of the property subject to the
3 preliminary order of forfeiture.

4 *b.* Holders of a bona fide security interest in the property
5 subject to the preliminary order of forfeiture.

6 *c.* Bona fide purchasers for value of the property subject to
7 the preliminary order of forfeiture.

8 *d.* Obligees of court-ordered child support from the
9 convicted person.

10 *e.* Claimants of employment-related compensation from the
11 convicted person.

12 2. Notice sent under subsection 1 shall include all of the
13 following:

14 *a.* A description of the specific property subject to the
15 preliminary order of forfeiture, including but not limited to
16 the address of any real property, the exact dollar amount of
17 any money, negotiable instrument, or securities, and the make,
18 model, year, and license plate number of any vehicles.

19 *b.* A statement that a petition contesting forfeiture must
20 be filed within sixty days of the date of receipt of certified
21 mail or personal service.

22 *c.* A statement describing the required contents of a
23 petition contesting forfeiture as set forth in section 809B.29.

24 *d.* The name and contact information for the attorney to be
25 served with the petition.

26 *e.* The signature of the attorney general, county attorney,
27 or the respective authorized designees of the attorney general
28 or county attorney.

29 3. Notice shall be served personally or by certified mail on
30 the potential claimant.

31 4. If a potential claimant cannot be personally served
32 or located within the jurisdiction of the court, notice of
33 the petition shall be given by the state through all of the
34 following:

35 *a.* In a newspaper of general circulation published in the

1 county where the property shall have been seized, once a week
2 for two successive weeks.

3 **b.** On the internet site of the prosecuting attorney for a
4 period of two weeks.

5 **5.** For purposes of subsection 4, a potential claimant cannot
6 be located in the jurisdiction of the court if all of the
7 following apply:

8 **a.** A copy of the petition is mailed to the potential
9 claimant's last known address by certified mail and is returned
10 without delivery.

11 **b.** Personal service is attempted once, but cannot be made at
12 the last known address.

13 **c.** A copy of the petition is left at the last known address.

14 **6.** The state shall file proof of notice with the district
15 court. A forfeiture order shall not be final until the court
16 finds that such proof satisfies the notice requirements under
17 subsections 1 through 5.

18 **Sec. 28. NEW SECTION. 809B.28 Third-party petition for a**
19 **hearing.**

20 Any person, other than the defendant, asserting a legal
21 interest in property subject to a preliminary order of
22 forfeiture may, within sixty days of the date of receipt of
23 certified mail or personal service or, in the case such service
24 fails, the date of final publication of substitute notice,
25 petition the court for a hearing to adjudicate the validity of
26 the person's alleged interest in the property.

27 **Sec. 29. NEW SECTION. 809B.29 Contents of third-party**
28 **claimant petition.**

29 A third-party claimant petition must:

30 **1.** Be signed by the petitioner under penalty of perjury.

31 **2.** Describe the nature and extent of the petitioner's right,
32 title, or interest in the property, the time and circumstances
33 of the petitioner's acquisition of the right, title, or
34 interest in the property, and any additional facts supporting
35 the petitioner's claim.

1 3. Describe the relief sought, which may include but is not
2 limited to:

3 *a.* Return of the petitioner's property.

4 *b.* Reimbursement for the petitioner's legal interest in the
5 forfeited property.

6 *c.* Severance of the petitioner's property from the forfeited
7 property.

8 *d.* Retention of the property by the petitioner subject to
9 a lien in favor of the state to the extent of the forfeitable
10 interest.

11 *e.* Any relief the court deems appropriate and just.

12 Sec. 30. NEW SECTION. **809B.30 Ancillary proceedings.**

13 1. If a third-party claimant timely files a petition
14 asserting a legal interest in the property to be forfeited
15 under section 809B.27 or 809B.28, the court shall conduct an
16 ancillary proceeding, no later than four months after entry
17 of the preliminary order of forfeiture. The hearing shall be
18 civil in form and the petitioner shall have a right to a jury
19 trial.

20 2. The hearing on the petition shall, to the extent
21 practicable and consistent with the interests of justice, be
22 held within thirty days of the filing of the petition. The
23 court may consolidate the hearing on the petition with a
24 hearing on any other petition filed under this section related
25 to the same underlying offense.

26 3. At the hearing, the petitioner may testify and present
27 evidence and witnesses, and may cross-examine witnesses who
28 appear at the hearing. The state may present evidence and
29 witnesses in rebuttal and in defense of the state's claim to
30 forfeit the property, and may cross-examine witnesses who
31 appear at the hearing. In addition to testimony and evidence
32 presented at the hearing, the court shall consider any relevant
33 portions of the record of the criminal case that resulted in
34 the order of forfeiture.

35 4. The court shall amend the order of forfeiture if, after

1 the hearing, the court determines that the petitioner has
2 established either of following by a preponderance of the
3 evidence:

4 a. The petitioner has a legal right, title, or interest
5 in the property, and such right, title, or interest renders
6 the preliminary order of forfeiture invalid in whole or in
7 part because the right, title, or interest was vested in the
8 petitioner rather than the defendant or was superior to any
9 right, title, or interest of the defendant at the time of the
10 commission of the acts which gave rise to the forfeiture of the
11 property under this chapter.

12 b. The petitioner is a bona fide purchaser for value of the
13 right, title, or interest in the property and the petitioner at
14 the time of purchase reasonably had no cause to believe that
15 the property was subject to forfeiture under this chapter.

16 Sec. 31. NEW SECTION. **809B.31 Entering a final order.**

17 When the ancillary proceeding ends, the court shall enter
18 a final order of forfeiture by amending the preliminary
19 order as necessary to account for any third-party rights or
20 interests. If a third party does not file a timely petition,
21 the preliminary order becomes the final order of forfeiture.

22 Sec. 32. NEW SECTION. **809B.32 Transfer of seized property**
23 **to federal government.**

24 1. Seizing law enforcement authorities or prosecuting
25 attorneys authorized to bring forfeiture proceedings under
26 this chapter shall not directly or indirectly transfer seized
27 property to any federal law enforcement authority or other
28 federal agency unless the court enters an order, upon petition
29 of the prosecuting attorney, authorizing the property to be
30 transferred. The court shall not enter an order authorizing a
31 transfer unless the activity giving rise to the investigation
32 or seizure is interstate in nature and sufficiently complex
33 to justify such transfer or the seized property may only be
34 forfeited under federal law.

35 2. The court may refuse to enter an order authorizing a

1 transfer to the federal government if such transfer would
2 circumvent the protections of this chapter that would otherwise
3 be available to the putative interest holder in the property.

4 3. A motion to transfer property to a federal law
5 enforcement authority under this section must include all of
6 the following:

7 a. A detailed description of the property seized.

8 b. The date and location where the property was seized.

9 c. A declaration that states the basis for relinquishing
10 jurisdiction to a federal law enforcement authority, contains
11 the names and addresses of any putative interest holders then
12 known, and is signed by the prosecuting attorney.

13 4. Prior to granting any order to transfer pursuant to
14 subsection 1, the district court shall give any putative
15 interest holder in the property the right to be heard with
16 regard to the transfer.

17 5. All property, money, or other things of value received
18 by a law enforcement authority pursuant to federal law which
19 authorizes the sharing or transfer of all or a portion of
20 forfeited property or the proceeds of the sale of forfeited
21 property to a law enforcement authority shall be promptly
22 distributed under section 809B.8 or 809B.9.

23 6. Any law enforcement authority that transfers property in
24 violation of subsection 1 or 2 is civilly liable to the state
25 for three times the amount of the forfeiture transferred and
26 for costs of suit and reasonable attorney fees. Any damages
27 awarded to the state shall be deposited in the general fund
28 of this state. Any agent, including state law enforcement
29 officers who are detached to, deputized or commissioned by,
30 or working in conjunction with a federal law enforcement
31 authority, who knowingly transfers or otherwise trades seized
32 property in violation of subsection 1 or 2 or who receives
33 property, money, or other things of value under subsection 5
34 and knowingly fails to transfer such property to the treasurer
35 of state is guilty of a serious misdemeanor.

1 Sec. 33. NEW SECTION. **809B.33 Jurisdiction and venue.**

2 1. The district court has jurisdiction under this chapter
3 over all of the following:

4 a. All interests in property within this state at the time
5 of the seizure or when a forfeiture action is filed.

6 b. The interest of the putative interest holder in the
7 property, including the defendant, who is subject to personal
8 jurisdiction in this state.

9 2. In addition to the venue provided for under chapter
10 803 or any other provision of law, a proceeding under this
11 chapter may be maintained in the district court in the county
12 in which any part of the property is found or in the county in
13 which a civil or criminal action could be maintained against
14 the putative interest holder in the property, including
15 the defendant, for the conduct alleged to give rise to the
16 forfeiture.

17 Sec. 34. Section 80.39, subsection 1, Code 2015, is amended
18 to read as follows:

19 1. Personal property, except for motor vehicles subject
20 to sale pursuant to section 321.89, and seizable property
21 subject to disposition pursuant to chapter 809 or ~~809A~~ 809B,
22 which personal property is found or seized by, turned in
23 to, or otherwise lawfully comes into the possession of the
24 department or a local law enforcement agency and which the
25 department or agency does not own, shall be disposed of
26 pursuant to this section. If by examining the property the
27 owner or lawful custodian of the property is known or can be
28 readily ascertained, the department or agency shall notify the
29 owner or custodian by certified mail directed to the owner's
30 or custodian's last known address, as to the location of the
31 property. If the identity or address of the owner cannot
32 be determined, notice by one publication in a newspaper of
33 general circulation in the area where the property was found
34 is sufficient notice. A published notice may contain multiple
35 items.

1 Sec. 35. Section 123.20, subsection 7, Code 2015, is amended
2 to read as follows:

3 7. To accept intoxicating liquors ordered delivered to the
4 alcoholic beverages division pursuant to chapter ~~809A~~ 809B,
5 and offer for sale and deliver the intoxicating liquors to
6 class "E" liquor control licensees, unless the administrator
7 determines that the intoxicating liquors may be adulterated
8 or contaminated. If the administrator determines that the
9 intoxicating liquors may be adulterated or contaminated, the
10 administrator shall order their destruction.

11 Sec. 36. Section 321.232, subsection 3, Code 2015, is
12 amended to read as follows:

13 3. A speed detection jamming device sold, operated, or
14 possessed in violation of subsection 1 may be seized by a peace
15 officer and is subject to forfeiture as provided by chapter 809
16 or ~~809A~~ 809B.

17 Sec. 37. Section 321J.4B, subsections 6, 9, and 10, Code
18 2015, are amended to read as follows:

19 6. Upon conviction of the defendant for a second
20 or subsequent violation of subsection 2, paragraph "a",
21 subparagraph (2), the court shall order, if the convicted
22 person is the owner of the motor vehicle used in the commission
23 of the offense, that that motor vehicle be seized and forfeited
24 to the state pursuant to chapters 809 and ~~809A~~ 809B.

25 9. Operating a motor vehicle on a street or highway in this
26 state in violation of an order of impoundment or immobilization
27 is a serious misdemeanor. A motor vehicle which is subject to
28 an order of impoundment or immobilization that is operated on a
29 street or highway in this state in violation of the order shall
30 be seized and forfeited to the state under chapters 809 and
31 ~~809A~~ 809B.

32 10. Once the period of impoundment or immobilization has
33 expired, the owner of the motor vehicle shall have thirty
34 days to claim the motor vehicle and pay all fees and charges
35 imposed under this section. If the owner or the owner's

1 designee has not claimed the vehicle and paid all fees and
2 charges imposed under this section within seven days from the
3 date of expiration of the period, the clerk shall send written
4 notification to the motor vehicle owner, at the owner's last
5 known address, notifying the owner of the date of expiration of
6 the period of impoundment or immobilization and of the period
7 in which the motor vehicle must be claimed. If the motor
8 vehicle owner fails to claim the motor vehicle and pay all fees
9 and charges imposed within the thirty-day period, the motor
10 vehicle shall be forfeited to the state under chapters 809 and
11 ~~809A~~ 809B.

12 Sec. 38. Section 321J.4B, subsection 12, paragraph a,
13 subparagraph (2), Code 2015, is amended to read as follows:

14 (2) The holder of a security interest in a vehicle which
15 is impounded or immobilized pursuant to this section or
16 forfeited in the manner provided in chapters 809 and ~~809A~~
17 809B shall be notified of the impoundment, immobilization,
18 or forfeiture within seventy-two hours of the seizure of the
19 vehicle and shall have the right to claim the motor vehicle
20 without payment of any fees or surcharges unless the value of
21 the vehicle exceeds the value of the security interest held by
22 the creditor.

23 Sec. 39. Section 321J.10, subsection 7, Code 2015, is
24 amended to read as follows:

25 7. Specimens obtained pursuant to warrants issued under
26 this section are not subject to disposition under section 808.9
27 or chapter 809 or ~~809A~~ 809B.

28 Sec. 40. Section 455B.103, subsection 4, paragraph d,
29 subparagraph (2), Code 2015, is amended to read as follows:

30 (2) In a reasonable manner, and any property seized shall be
31 treated in accordance with the provisions of chapters 808, 809,
32 and ~~809A~~ 809B.

33 Sec. 41. Section 462A.14D, subsection 7, Code 2015, is
34 amended to read as follows:

35 7. Specimens obtained pursuant to warrants issued under

1 this section are not subject to disposition under section 808.9
2 or chapter 809 or ~~809A~~ 809B.

3 Sec. 42. Section 706A.3, subsection 3, paragraphs d and e,
4 Code 2015, are amended to read as follows:

5 d. Ordering the payment of all reasonable costs and expenses
6 of the investigation and prosecution of any violation, civil
7 or criminal, including reasonable attorney fees in the trial
8 and appellate courts. Such payments received by the state,
9 by judgment, settlement, or otherwise, shall be considered
10 forfeited property and disposed of pursuant to ~~section 809A~~.
11 chapter 809B.

12 e. Ordering the forfeiture of any property subject to
13 forfeiture under chapter ~~809A~~ 809B, pursuant to the provisions
14 and procedures of that chapter.

15 Sec. 43. Section 706A.3, subsection 4, Code 2015, is amended
16 to read as follows:

17 4. Relief under subsection 3, paragraphs "e", "f", and
18 "g", shall not be granted in civil proceedings instituted
19 by an aggrieved person unless the prosecuting attorney has
20 instituted the proceedings or intervened. In any action under
21 this section brought by the state or in which the state has
22 intervened, the state may employ any of the powers of seizure
23 and restraint of property as are provided for forfeiture
24 actions under chapter ~~809A~~ 809B, or as are provided for the
25 collection of taxes payable and past due, and whose collection
26 has been determined to be in jeopardy.

27 Sec. 44. Section 706B.2, subsection 4, Code 2015, is amended
28 to read as follows:

29 4. A person who is found guilty of a violation under this
30 section also may be charged with violations of chapter 706A,
31 and property involved in a violation under this chapter is
32 subject to forfeiture under chapter ~~809A~~ 809B.

33 Sec. 45. Section 715A.8, subsection 6, Code 2015, is amended
34 to read as follows:

35 6. Any real or personal property obtained by a person as

1 a result of a violation of this section, including but not
 2 limited to any money, interest, security, claim, contractual
 3 right, or financial instrument that is in the possession of the
 4 person, shall be subject to seizure and forfeiture pursuant to
 5 chapter ~~809A~~ 809B. A victim injured by a violation of this
 6 section, or a financial institution that has indemnified a
 7 victim injured by a violation of this section, may file a claim
 8 as an interest holder pursuant to section ~~809A.11~~ 809B.28 for
 9 payment of damages suffered by the victim including costs of
 10 recovery and reasonable attorney fees.

11 Sec. 46. Section 716A.7, Code 2015, is amended to read as
 12 follows:

13 **716A.7 Forfeitures for violations of chapter.**

14 All property, including all income or proceeds earned but
 15 not yet received from a third party as a result of a violation
 16 of this chapter, used in connection with a violation of this
 17 chapter, known by the owner thereof to have been used in
 18 violation of this chapter, shall be subject to seizure and
 19 forfeiture pursuant to chapter ~~809A~~ 809B.

20 Sec. 47. Section 724.26, subsection 4, Code 2015, is amended
 21 to read as follows:

22 ~~4. Except as provided in section 809A.17, subsection 5,~~
 23 ~~paragraph "b"~~ Notwithstanding chapter 809B, a court that issues
 24 an order or that enters a judgment of conviction described
 25 in subsection 2 and that finds the subject of the order or
 26 conviction to be in possession of any firearm, offensive
 27 weapon, or ammunition shall order that such firearm, offensive
 28 weapon, or ammunition be sold or transferred by a date
 29 certain to the custody of a qualified person in this state,
 30 as determined by the court. The qualified person must be
 31 able to lawfully possess such firearm, offensive weapon, or
 32 ammunition in this state. If the court is unable to identify a
 33 qualified person to receive such firearm, offensive weapon, or
 34 ammunition, the court shall order that the firearm, offensive
 35 weapon, or ammunition be transferred by a date certain to the

1 county sheriff or a local law enforcement agency designated
 2 by the court for safekeeping until a qualified person is
 3 identified to receive the firearm, offensive weapon, or
 4 ammunition, until such order is no longer in effect, until such
 5 conviction is vacated, or until the person's rights have been
 6 restored in accordance with section 724.27. If the firearm,
 7 offensive weapon, or ammunition is to be transferred to the
 8 sheriff's office or a local law enforcement agency, the court
 9 shall assess the person the reasonable cost of storing the
 10 firearm, offensive weapon, or ammunition, payable to the county
 11 sheriff or the local law enforcement agency.

12 Sec. 48. Section 809.5, subsection 1, paragraph f,
 13 subparagraph (1), Code 2015, is amended to read as follows:

14 (1) If the aggregate fair market value of the property is
 15 greater than five hundred dollars, ~~forfeiture proceedings shall~~
 16 ~~be initiated pursuant to the provisions of chapter 809A. If the~~
 17 ~~court does not order the property forfeited to the state in the~~
 18 ~~forfeiture proceedings pursuant to chapter 809A, the seizing~~
 19 ~~agency shall become the owner of the property and may dispose~~
 20 ~~of it in any reasonable manner~~ the property shall be disposed
 21 of as if the property was forfeited under chapter 809B and in
 22 the manner prescribed in sections 809B.8 and 809B.9.

23 Sec. 49. REPEAL. Chapter 809A, Code 2015, is repealed.

24 Sec. 50. APPLICABILITY. The section of this Act enacting
 25 section 809B.11 is first applicable on October 1, 2015.

26 Sec. 51. APPLICABILITY. The section of this Act enacting
 27 section 809B.12 is first applicable on July 1, 2016.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with
 30 the explanation's substance by the members of the general assembly.

31 This bill relates to criminal asset forfeiture.

32 Asset forfeiture is a process by which contraband and
 33 proceeds or instrumentalities related to criminal activity may
 34 be seized by the state and sold. Under current law, asset
 35 forfeiture is governed by Code chapter 809A. The bill repeals

1 Code chapter 809A and replaces it with new Code chapter 809B.

2 Under current Code chapter 809A, a conviction for a
3 criminal offense is not required for an asset to be subject to
4 forfeiture. The bill provides that property is not subject to
5 forfeiture until a person has been convicted of an offense for
6 which forfeiture is expressly authorized as a penalty.

7 Under current Code chapter 809A, forfeiture proceedings are
8 generally governed by the rules of civil procedure. The bill
9 provides that forfeiture proceedings are governed by the rules
10 of criminal procedure.

11 Under current Code chapter 809A, forfeited property which
12 may be sold or forfeited cash is distributed among the seizing
13 agency, county attorneys, and the department of justice. The
14 bill provides that sold property or forfeited cash shall be
15 first used to satisfy any restitution orders for victims of the
16 underlying offense, second to pay any liabilities the state
17 owes to defendants or claimants who substantially prevail in
18 forfeiture proceedings, and third, if in the custody of the
19 attorney general, to the general fund of the state, or if in
20 the custody of the county attorney, to the general fund of the
21 county.

22 The bill requires every county to provide an annual audit
23 of forfeited property to the attorney general by September 30
24 of each year. The bill provides that this requirement applies
25 October 1, 2015.

26 The bill requires the attorney general to submit an annual
27 report to the general assembly giving a report of the forfeited
28 property and proceeds of the forfeited property. The bill
29 provides that this section applies July 1, 2016.

30 The bill describes requirements for the use of property held
31 in custody, use of cash or proceeds, and the distribution of
32 property among law enforcement. The bill provides taxpayer
33 standing for any alleged violations of the use of property
34 held in custody, use of cash or proceeds, the distribution of
35 property among law enforcement, and the reporting requirements

1 for counties and the attorney general. By providing taxpayer
2 standing, a taxpayer in the state has standing to challenge an
3 action as contrary to those requirements, even if such taxpayer
4 has no injury other than as a taxpayer.

5 The bill provides that in a forfeiture proceeding
6 under new Code chapter 809B in which the defendant or
7 claimant substantially prevails, the state shall be liable
8 for reasonable attorney fees and other litigation costs
9 reasonably incurred by the defendant or claimant, postjudgment
10 interest, and in cases involving currency or other negotiable
11 instruments, interest actually paid to the state and an imputed
12 amount of interest that such currency or instrument would have
13 earned at the rate applicable to the 30-day treasury bill, for
14 any period during which no interest was paid.

15 The bill provides that forfeiture proceedings shall be
16 tried in the same proceeding as the criminal case unless the
17 defendant moves to bifurcate the trial of the forfeiture from
18 the trial of the underlying criminal offense.

19 Under current law, an in rem civil forfeiture proceeding
20 is held without a jury. The bill provides that the defendant
21 has the right to trial by jury regarding the forfeiture. The
22 defendant may waive this right while maintaining the right to
23 trial by jury for the criminal offense, or waive the right to
24 trial by jury for the criminal offense and maintain such right
25 for the forfeiture proceeding.

26 The bill provides that a court shall make a determination
27 that the forfeiture is not grossly disproportional to the
28 gravity of the underlying offense. The state shall have the
29 burden of establishing proportionality by clear and convincing
30 evidence.

31 The bill provides that a law enforcement agent who transfers
32 seized property to the federal government other than upon a
33 court order, or who receives property, money, or other things
34 of value from the federal government pursuant to federal law
35 which authorizes the sharing or transfer of all or a portion

1 of forfeited property or the proceeds of the sale of forfeited
2 property and fails to transfer such property to the treasurer
3 of state is guilty of a serious misdemeanor. A serious
4 misdemeanor is punishable by confinement for no more than one
5 year and a fine of at least \$315 but not more than \$1,875.

6 The bill makes conforming changes relating to the repeal of
7 Code chapter 809A and the enactment of new Code chapter 809B.